IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No. 4869 of 2005 (O&M)
Date of decision : 6.11.2006.

Malti

.....Petitioner.

Versus

Kalyan Singh & Ors.

.....Respondents.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.S.C.Kapoor, Sr.Advocate
with Mr. Harminderjit Singh,Advocate
for the petitioner.

Mr. Vikash Chaudhary, Advocate
for respondents No. 1 to 4.

Mr. V.B. Aggarwal, Advocate
for respondents No. 15 to 18.

****

VINOD K. SHARMA,J.(ORAL)

The present revision petition has been filed against the order dated 7.3.2005 passed by the learned Addl. District Judge, Karnal vide which the application filed by respondents No. 1 to 4 herein for setting aside exparte decree has been allowed.

The respondents No. 1 to 4 herein were proceeded ex parte on 4.1.1999.This was on account of the fact that the respondents had filed another reference qua the same land under Section 18 of the Land Acquisition Act, which was pending in the same Court. The Court on different stages expressed its view that both the references should be heard and decided together. It was on account of pendency of two references in

the same Court that the respondents did not come to know about the ex parte proceedings taken out against them.

On coming to know that the respondents have been proceeded ex parte a reference was made to the Court to adjourn the case so as to enable the respondents to move an application for setting aside ex parte order. The case was adjourned to 17.7.2001 for filing the said application, however, on the said date the case was transferred to another Court. However, the transferee Court without notice to the respondents herein passed ex parte award in view of the compromise between the parties to which the respondents were not a party. On coming to know about the said ex parte award passed on 19.7.2001 an application was moved for setting aside the ex parte award.

The respondents No. 1 to 4 sought stay of reference filed by respondent No.15 herein on the ground that the reference filed by the respondents No. 1 to 4 herein has been answered in their favour ex parte. The said application was dismissed on 6.3.2004 against which the said respondents filed a revision petition No. 1567 of 2004. The said application was dismissed by observing as under :-

> "Therefore, it would be in the interest of justice, if the proceedings in the present references are decided along with reference sought at the instance of the petitioner. The proceedings in the present case shall be taken up after the decision of the application filed by the respondent for setting aside ex parte proceedings together the reference at the instance of the petitioner. The learned trial court is directed to decide the

application for setting aside ex parte award expeditiously within a period of three months and thereafter post both references for hearing on merits together in accordance with law."

After passing of the order by this Court the learned Addl. District Judge by way of impugned order set aside an ex parte award by holding therein that the transferee Court had not issued notice to respondents No. 1 to 4 of the proceedings and, therefore, the order could not be sustained. The Court also took notice of the fact that by way of various interim orders the Court had observed that both the references i.e. one filed by respondents No. 1 to 4 and other by respondent No.15 herein, were to be consolidated and decided together. The ex parte award, therefore, was set aside in the interest of justice.

Mr. S.C. Kapoor, Sr. Advocate appearing on behalf of the petitioner contended that the order passed by this Court in C.R. No. 1567 of 2004 on 6.12.2004 cannot stand in his way as the impugned order was passed subsequently. The contention of the learned counsel for the petitioner was that the impugned order has to be decided on merits as this order was passed subsequent to the order passed in revision petition. This contention of the learned counsel for the petitioner cannot be accepted as the impugned order has been passed on merit keeping in view interim orders passed by the Court while adjourning the reference made by the petitioner as also keeping in view the fact that transferee Court had issued no notice to the respondents before passing ex parte award on the basis of compromise entered into between the parties.

The learned Senior Counsel appearing on behalf of the petitioner thereafter contended that the impugned order cannot be sustained as no notice was given to the petitioner. This contention cannot be accepted as the impugned order clearly takes note of the fact that the notice was given to the petitioner of the application moved by the respondents but the said application was contested only by Kalyan Singh, Smt. Kela Devi, Satinder Singh and Bajinder Singh, who filed reply to the said application and contested the same on merits. Thus, it is clear that it was the petitioner who, chose not to appear in spite of notice. Therefore, the order setting aside ex parte award is not an ex parte order but one passed on merits.

The learned Senior Counsel appearing on behalf of the petitioner thereafter contended that the learned Courts below wrongly applied the provisions of the Limitation Act in holding that the application filed by the respondents was within time. The contention of the learned Senior Counsel for the petitioner was that the limitation for setting aside ex parte award was 30 days whereas the learned Court below has taken the limitation to be three years. This contention of the Sr. Counsel for the petitioner cannot be accepted as the respondents had no notice of the said order and were in fact prosecuting the reference filed by them under Section 18 of the Act. The application for setting aside was moved immediately after coming to know about the ex parte order. Thus, it could not be said that the application was barred by limitation as the application was filed immediately after coming to know of it. The petitioner cannot be allowed to take benefit of concealment of an order obtained behind the back of the respondents.

The learned Senior Counsel finally contended that the respondents in spite of availing two opportunities to move an application for setting aside ex parte proceedings did not move an application and, therefore, the impugned order cannot be sustained. It may be noticed that the respondents were regularly appearing in the Court and, therefore, had every right to contest the claim and it was not open to the petitioner to take advantage of their absence in the transferee Court to obtain an ex parte award on the basis of a compromise. Even otherwise, finding of an ex parte award gave right to the respondents to get the same set aside.

Substantial justice has been done in the present case. The wrong exercise of powers by the Court having jurisdiction cannot be a ground of interference by this Court under Article 227 of the Constitution of India and, therefore, finding no merit in the present revision petition, the same is dismissed in limine.

6.11.2006 **(VINOD K. SHARMA)**
'sp' **JUDGE**